

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

CENTURYTEL, INC.

Employer

and

Case 19-RC-15246

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION 768,
AFL-CIO, CLC ¹

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.² Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I make the following findings and conclusions.³

I. SUMMARY

CenturyTel, Inc. ("the Employer") is a nationwide telephone, data and internet provider. International Brotherhood of Electrical Workers, Local Union 768, AFL-CIO, CLC ("Petitioner"), currently represents a unit of employees employed at its Kalispell, Montana facility. Petitioner in this case seeks a self-determination election among certain employees employed by the Employer at its Salmon and Grand View, Idaho, locations. The petitioned-for election would determine whether the employees wish to be included in the existing bargaining unit.⁴

The Employer opposes the petition, asserting the employees in Salmon and Grand View do not share a sufficient community of interest with the employees in the existing unit to make the petitioned-for election appropriate. The Employer further asserts that the

¹ The names of both parties appear as amended at hearing.

² The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

³ The parties submitted timely briefs, which I have carefully considered.

⁴ No other labor organization seeks to represent the employees covered by the instant petition.

employees at the two Idaho facilities do not share a community of interest sufficient to make a single unit in Idaho appropriate.

I have carefully reviewed and considered the record evidence and the arguments of the parties, both at hearing and in post-hearing briefs. Based on the following facts and analysis I find, consistent with the Employer, that employees in Idaho do not share a sufficient community of interest with the existing unit to make the petitioned-for self-determination election appropriate. I do find, however, that the Salmon and Grand View employees share a community of interest sufficient to make a single bargaining unit in Idaho appropriate. As Petitioner has indicated a willingness to go forward to election under these circumstances, I have directed an election accordingly.

Below, I have summarized the record evidence detailing the Employer's operations. Following my summary of the relevant record evidence is my analysis of the applicable legal standard, specifically the Board's community of interest standard. In conclusion, I have addressed the details of the directed election and the procedures for requesting review of this decision.

II. RECORD EVIDENCE⁵

A. Employer's Operation

The Employer provides telephone, data and internet service in multiple states, including Montana and Idaho. The Employer maintains a facility in Kalispell, Montana, that services the Kalispell area, where Petitioner currently represents a unit of approximately 50 employees. The Kalispell facility also functions as an operations center for the Employer's business in Idaho and northern Nevada, performed out of two satellite facilities, one in Salmon and one in Grand View, Idaho.⁶

The Kalispell, Salmon and Grand View networks were purchased by the Employer from previous operators. The Employer purchased the Salmon operations in 1982 from Lemhi Telephone Company, and the Kalispell and Grand View operations from Pacific Telecom in 1998. As a result, the Salmon exchange is not directly linked to the Kalispell and Grand View exchange, but the Employer links the separate systems by leasing sections of another telecommunication provider's network. The existing bargaining unit in Kalispell pre-dates the Employer's purchase, and the employees in Salmon and Grand View have been historically unrepresented.

Kalispell is located in northwestern Montana, and the Employer provides service in the surrounding area. These operations are divided into four territories, each supervised by an area plant supervisor. Three of the area plant supervisors are based at the Kalispell facility and cover territories including central Kalispell and the two territories south of the

⁵ The Employer called Area Plant Supervisor Scott Benton and Area Operations Manager Dorothea Schaeffer as witnesses. Petitioner called Assistant Business Manager Bob Strange as a witness. Strange was previously the Employer's Montana Area Human Resources Manager.

⁶ The Kalispell "area of operations" includes the Kalispell, Salmon and Grand View facilities. The Kalispell area of operations is part of the Employer's Rocky Mountain Region, covering a number of western states. The Rocky Mountain region is one of five regional offices that report to the Employer's corporate headquarters in Louisiana.

city. The fourth area plant supervisor is responsible for a territory north of Kalispell, and works out of a facility in Columbia Falls, Montana, a short distance from Kalispell. The bargaining unit, consisting of employees working in all of these territories, consists of communication, cable, business system, facility, data system, plant, and drafting technicians, as well as customer service representatives, service clerks, and customer care associates.⁷

Salmon is located in central, eastern Idaho, approximately 260 miles, by road, south of Kalispell. Area Plant Supervisor Scott Benton, responsible for the Salmon and Grand View facilities, works out of the Salmon facility.⁸ In addition to Benton, two technicians (one communication and one plant), and one customer care associate are employed at the facility.⁹ At hearing, Benton stated that the normal complement of technicians at Salmon is three, with a second communication technician employed at the facility; one technician had left his employment in May of 2009, and the Employer only recently filled the position. The recent hire has not yet started work. In addition to Salmon, the employees at that facility also provide service to the neighboring communities of North Fork and Leadore, Idaho.

The Employer's Grand View facility is located in the southwest corner of the state, approximately 320 miles southwest of Salmon, on the Nevada border. The Employer employs one communication and one plant technician at the Grand View location. These employees provide service to the Grand View, Bruneau, Richfield and Grasmere-Riddle communities in Idaho, as well as the neighboring communities of Owyhee and Mountain City in Nevada.

As the front-line supervisor for the Idaho employees in both Salmon and Grand View, Benton has a variety of responsibilities. His duties include the assignment of work, hiring, performance evaluations, approving time off and authorizing overtime. Benton estimated he spends approximately 75 percent of his time at Salmon, and 25 percent of his time at Grand View. When in Salmon, Benton stated he is in daily phone contact with the employees in Grand View. Benton is one of the five area plant supervisors who report to Area Operations Manager Dorothea Schaeffer, whose office is located in Kalispell. Schaeffer in turn reports to General Manager Jeremy Ferkin, also located in Kalispell.¹⁰

As in Montana, technicians in Idaho have a normal work schedule of 8:00 a.m. to 5:00 p.m., with occasional after-hours work in an emergency, or when a change is being made to the system that could result in an interruption of service. The Employer's employees in Idaho are compensated on the Employer's non-represented wage scale, the top rate of which is \$26.84 an hour.¹¹ The employees also receive the same benefits, are subject to the same

⁷ The term "technician," as used in this decision, refers to all technicians positions collectively. Where the differences in duties and responsibilities are material, the specific titles will be used.

⁸ The parties stipulated to exclude Benton from any unit found appropriate as a Section 2(11) supervisor. Based on the parties' stipulation and the record evidence I shall exclude Benton accordingly.

⁹ The parties stipulated to exclude the customer care representative employed in Salmon from any unit found appropriate (presumably the stipulation was intended to cover customer care associate Shanon Austin, as there is no evidence of a customer care representative being employed in Idaho). The record does not contain any factual basis for this stipulation. Under such circumstances, and because customer care representatives and associates are included in the bargaining unit in Montana, I make no finding here regarding the parties' stipulation.

¹⁰ Prior to a July of 2009 reorganization, Benton reported directly to General Manager Ferkin.

¹¹ The top rate for Montana plant and communication technicians in 2009 is \$26.99 an hour, per the parties' collective bargaining agreement.

policies, and have the same employee handbook as other non-represented employees employed by the Employer. Technicians in Idaho wear the same uniform as technicians in Montana, a company provided shirt identifying the employer, and Employer provided pants are available, but optional.

Communication technicians are responsible for the maintenance and repair of the Employer's digital switching equipment, at the Employer's facilities and at remote locations throughout the network. Communication technicians also install and maintain telephone and DSL equipment in the field for residential and commercial customers.¹² Plant technicians primarily maintain and repair the Employer's cable network. Plant technicians also install and repair telephone wires and jacks, locate wires, and assist in doing digital switching work at remote locations. Both positions spend a significant amount of time in the field.

There is limited contact between the employees in Idaho and Montana, although there is regular contact between Benton and the Kalispell office. Technicians from Idaho occasionally travel to Kalispell for training. Benton estimated perhaps four times in the last 7 or 8 years all of the technicians in Idaho and Montana were brought together in Kalispell for training. On one occasion in 2000 or 2001, technicians from Montana travelled to Idaho for training. The record also indicates that in June of 2009, a technician from Montana worked in Idaho for several days to provide vacation coverage.¹³

Occasionally, technicians with specialized skills, usually fiber optic splicing, are needed in Idaho, as the technicians in Idaho do not have the ability to perform certain repairs. When this occurs, technicians from Montana have been dispatched to perform the work, and on occasion outside contractors have been hired to perform this work. At hearing it was estimated technicians had traveled from Kalispell to Idaho to perform fiber optic splicing "a couple of times over the last few years." Montana technicians may not have any contact with Idaho technicians while performing their work in Idaho.

While the contact between the Idaho and Montana employees is limited, Benton is in frequent contact with the Kalispell office. Benton estimated in 2009 he traveled to the Kalispell office approximately 8 times, primarily for meetings.¹⁴ In addition to physically visiting the Kalispell office, Benton is also in frequent contact with the Kalispell office by telephone and email. Benton testified that he would involve human resources in Kalispell in any "serious issue" involving an employee. Although he makes decisions regarding hiring, Benton must receive

approval from Kalispell regarding hires, and approval is necessary for terminations, although none have occurred among the Idaho workforce.

III. LEGAL ANALYSIS

A union may seek to add unrepresented employees to an existing bargaining unit by petitioning for a self-determination election. In a self-determination election, if the majority

¹² The Employer does not offer DSL service to residential customers in the Grand View area.

¹³ A technician from the Pinedale, Wyoming, area of operations also assisted in providing approximately a week of vacation coverage in Idaho. The Pinedale area of operations reports to a General Manager in Colorado, and is separate from the area of operations covering Montana and Idaho.

¹⁴ Benton estimated that prior to July, when he was reporting directly to General Manager Ferkin, Ferkin would visit the Salmon office approximately twice a year, and the Grand View office perhaps once or twice in a 3 year period.

of employees votes against representation, they remain unrepresented, but if the majority of employees votes for representation, they become part of the existing unit. *Warner-Lambert Co.*, 298 NLRB 993 (1990). Before a self-determination is directed, the Board will determine whether the employees to be included share a community of interest with the employees in the existing unit, as well as whether the employees to be added constitute an appropriate voting group. *Id.* at 995. See also *University of Pittsburgh Medical Center*, 313 NLRB 1341 (1994).

The Board has held that in order for a unit to be appropriate for purposes of collective-bargaining within the meaning of the Act, the unit need not be the only appropriate unit or the most appropriate unit; it need only be *an* appropriate unit. *Barron Heating and Air Conditioning, Inc.*, 343 NLRB 450, 452 (2004), citing *American Hosp. Ass'n v. NLRB*, 499 U.S. 606, 610 (1991); *Overnite Transportation Co.*, 322 NLRB 723 (1996). Thus, in determining whether a unit is appropriate, the Board first examines the petitioned-for unit and, if the petitioned-for unit is *an* appropriate unit, the inquiry ends. *Barlett Collins, Co.*, 334 NLRB 484, 484 (2001). If it is not an appropriate unit, the Board then examines whether an alternative unit suggested by the parties or another unit not suggested by the parties is appropriate. *Overnite Transportation Co.*, 331 NLRB 663, 664 (2000). In determining whether a group of employees possesses a community of interest, the Board examines such factors as: (1) functional integration; (2) frequency of contact and interchange with other employees; (3) degree of skill and common functions; (4) commonality of wages, hours, and other working conditions; (5) shared supervision, and, if applicable, (6) bargaining history. *Publix Super Markets*, 343 NLRB 1023, 1024 (2004); *Bashas', Inc.*, 337 NLRB 710 (2002); *Ore-Ida Foods*, 313 NLRB 1016 (1994), *affd.* 66 F.3d 328 (7th Cir. 1995).

Under the circumstances of this case, the questions presented are first, whether technicians in the Salmon and Grand View facilities share a sufficient community of interest to make those employees an appropriate unit, and second, if so whether the Idaho technicians share a community of interest with the existing unit in Montana. Based upon a careful review of the record evidence and analysis of relevant Board principles, I find that the Salmon and Grand View technicians share a community of interest among themselves, but not with the existing bargaining unit in Montana.

A. Community of Interest Factors

1. Functional Integration

Some functional integration is present in the instant case in the most general sense. The Employer operates a telecommunications network, and the employees in Idaho and Montana are all responsible for keeping their respective portions of that network operating. All technicians at issue, both in Idaho and Montana, are employed in the Employer's Kalispell area of operations. There is little evidence of any other integration, however, particularly between Idaho and Montana. Technicians perform their day-to-day functions independently, and there is no evidence of any technician requiring the input or assistance of any technician outside their area to complete their duties. On balance, the lack of functional integration between the Montana and Idaho technicians provides support for finding that the petitioned-for self-determination election is not appropriate.

On the other hand, the Employer treats the 2 Idaho facilities as one of the five territories reporting to Area Operations Manager Schaeffer, indicating that it is an administrative subdivision, integrated into the Kalispell operations. Thus, under this circumstance, and those discussed above, the factor of functional integration, as it relates to the facilities in Idaho and their relation to each other, is of minimal value to my conclusion.

2. Contact and Interchange

There is little evidence in the record of contact between technicians; between either Salmon and Grand View or Idaho and Montana. While this in part because of the independent nature of the technicians' duties, it is primarily because of the large geographic distances involved. In addition to the lack of regular contact in their daily duties, there is additionally scant evidence of technicians being brought together for meetings, training or social activities. It was estimated at hearing that the technicians are only brought together in this manner on average of once every two years.

Although a lack of short term contact may be balanced by evidence of longer term interchange, the record is also without evidence of temporary or long term transfers. The record contains one example of a technician from Montana working in Idaho for several days to provide vacation coverage, but in this is the only evidence of this type of transfer. The Employer correctly notes that there is no evidence of permanent transfers or promotions. On balance, I find the consideration of contact and interchange between the various technicians supports the Employer's position that a self-determination election is not appropriate, and lends support to its position that separate units at the Idaho facilities are appropriate.

3. Similar Skills and Functions

The parties stipulate that all technicians, regardless of location, perform the same work. In short, the Employer employs communication and plant technicians in Salmon, Grand View and Kalispell, and their jobs are the same in all points material to the instant determination. I find this factor provides support for finding the petitioned-for election is appropriate, but also that the Salmon and Grand View technicians share a community of interest sufficient to constitute a separate appropriate unit.

4. Terms and Conditions of Employment

Several terms and conditions of employment are identical for all technicians, whether they are employed in Salmon, Grand View or Kalispell. This includes conditions such as scheduling, with a regular schedule between the hours of 8:00 a.m. and 5:00 p.m. and the need to occasionally work night shifts or be available at all hours to repair service outages. Pay, benefits, and all other terms and conditions of employment are identical for the employees in Salmon and Grand View, and thus, I find this factor weighs heavily in favor of finding a shared community of interest among the Idaho employees.

I recognize that many significant terms and conditions are different between the Idaho technicians and Montana technicians, such as pay and benefits.¹⁵ These differences, however, are the direct result of the bargaining agreement between the parties in Montana.

¹⁵ Although I note there is very little difference in the relevant portions of the bargaining unit and non-represented wage scales.

As such, I find these differences mitigated, and accordingly I find, in regard to the Idaho technicians and the existing Montana unit, this is a neutral factor.

5. Common Supervision

Area Plant Supervisor Benton is the front line supervisor for the employees in Salmon and Grand View, while the four area plant supervisors in Montana fill that role for their respective territories within the existing bargaining unit. All five area plant supervisors report to Schaeffer and Ferkin at the second and third level, but at least in regard to Benton, the front line duties involve decision making in hiring, assignment of work, completing performance evaluations, approving time off and authorizing overtime. This factor favors the Employer's position in regard to the relationship between the Idaho technicians and the existing bargaining unit in Montana, but strongly favors finding a community of interest between the Salmon and Grand View technicians.¹⁶

B. Conclusion

I find in light of the minimal functional integration, lack of contact and interchange resulting from significant geographic distance, and separate supervision, the Idaho technicians do not share a community of interest with the employees in the existing Montana bargaining unit sufficient to allow the petitioned-for self-determination election. I do find however, that the technicians in Salmon and Grand View, considering the additional significant factor of shared supervision in addition to the factors of identical skills, functions and terms and conditions of employment, do share a community of interest and constitute a separate appropriate bargaining unit.

In reaching this conclusion I reject the Employer's contentions regarding the Board's single facility presumption. While the Employer correctly identifies the existence of such a presumption, the Employer's argument that Petitioner's evidence is insufficient to overcome the presumption is misplaced. As noted, the Idaho employees have and use the same skills to perform the same job functions; enjoy the same wages, benefits and working conditions; and, under Benton, are subject to common supervision. Moreover, the Union is willing to represent the Idaho-based employees as a separate unit. Thus, the fact that the employees may not work out of the same facility on a regular basis is insufficient to render a unit of Idaho-based employees inappropriate. See, e.g., *Marks Oxygen Company of Alabama*, 147 NLRB 228, 229 (1964).¹⁷

IV. CONCLUSION

Based on the foregoing, the entire record, and having carefully considered the parties' briefs, I conclude that the petitioned-for self-determination election is not

¹⁶ The record reveals no bargaining history applicable to the instant case.

¹⁷ On brief, the Employer cites to *Renzetti's Market*, 238 NLRB 174 (1978), regarding the failure to overcome the single facility presumption. In *Renzetti's*, the Regional Director denied Petitioner's attempt to represent employees at only one of an Employer's two stores. In reversing the Director, the Board found the "day-to-day problems and concerns" of the stores' employees were not merged, in large part due to separate immediate supervision. *Id.* at 175. As a general statement of law regarding the burden of overcoming the single facility presumption the case is applicable, but the facts in *Renzetti's*, including immediate supervision are not on point, and the facts in the instant case dictate a different result.

appropriate. Rather, I find the technicians in Salmon and Grand View constitute an appropriate bargaining unit, and note Petitioner's willingness to go forward to an election in this unit.

For these reasons, and in view of the record evidence, I shall direct an election in the following appropriate unit ("Unit"):

All full-time and regular part-time technicians employed in the Employer's operating units in Salmon and Grand View, Idaho; excluding all other employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

There are approximately four (4) employees in the voting group found appropriate.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Electrical Workers, Local Union 768, AFL-CIO, CLC.

A. List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in Region 19 of the National Labor Relations Board, 915 Second Avenue, Suite 2948, Seattle, Washington 98174 on or before **November 2, 2009**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list.

Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

B. Notice Posting Obligations

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20570. This request must be received by the Board in Washington by **November 9, 2009**. The request may be filed through E-Gov on the Board's web site, <http://www.nlr.gov>, but may not be filed by facsimile.¹⁸

DATED at Seattle, Washington on the 26th day of February, 2010.

/s/ Richard L. Ahearn
Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

¹⁸ To file a request for review electronically, go to <http://www.nlr.gov> and select the E-Gov tab. Then click on the E-filing link on the menu. When the E-file page opens, go to the heading Board/Office of the Executive Secretary, and click the "File Documents" button under that heading. A page then appears describing the E-filing terms. At the bottom of the page, check the box next to the statement indicating that the user has read and accepts the E-File terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the "Submit Form" button. Guidance for E-Filing is contained in the attachment supplied with the Regional office's original correspondence in this matter and is also located under "E-Gov" on the Board's website, <http://www.nlr.gov>.